

**TITLE 2. ADMINISTRATION
DIVISION 7. SECRETARY OF STATE
NOTICE OF PROPOSED RULEMAKING**

Notice is hereby given that the Secretary of State intends to adopt the proposed regulations described below after considering all comments regarding the proposed action. The Secretary of State adopted the proposed regulations as emergency regulations on February 5, 2004, readopted amended emergency regulations on June 1, 2004 and September 29, 2004. The emergency regulatory action is scheduled to expire on January 28, 2005, unless the Office of Administrative Law receives a certificate of compliance from the Secretary of State by January 27, 2005 or the emergency regulations are readopted.

PROPOSED REGULATORY ACTION

The Secretary of State proposes to adopt Section 20107 of Article 7 of Chapter 1 of Division 7 of Title 2 of the California Code of Regulations, as amended in the proposed text of the regulations, which establishes uniform standards for proof of residency or identity when a voter or new registrant is required by law to provide proof. The proposed amendments are clarifying in nature.

The proposed regulations provide for two basic types of documentation to prove residency or identity. The first type of documentation provided for in paragraph (1) of subdivision (d) of Section 20107 is valid and current identification prepared by a third party in the ordinary course of business that includes the photograph and name of the individual presenting it. Examples are listed in paragraph (1) and include, but are not limited to: driver's license or identification card issued by any state; passport; identification card issued by a commercial establishment; credit or debit card; and employee, military, student, health club, or insurance plan identification card.

The second type of documentation that can be used to prove residency or identity consists of those documents listed in paragraph (2) of subdivision (d) of Section 20107 provided that the document is current, valid, and includes the name and address of the individual presenting. The documents listed in paragraph (2) include: utility bill; bank statement; government check or paycheck; and sample ballot, voter notification card, public housing identification card, lease or rental agreement, and student identification card issued by governmental agencies.

PUBLIC HEARING

The Secretary of State has not scheduled a public hearing on this proposed action. However, the Secretary of State will hold a hearing if a written request for a public hearing is received from any interested person, or his or her authorized representative, no later than fifteen (15) days before the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Secretary of State. The written comment period closes at 5:00 p.m. on March 1, 2005. Only written comments received at the office of the Secretary of State by that time shall be considered. Submit written comments to the contact person or backup contact person listed below.

AUTHORITY AND REFERENCE

Authority cited: Section 12172.5, Government Code; and Section 2124, Elections Code.

Reference cited: Section 14310, Elections Code; Section 303, Pub. L. No. 107-252, 116 Stat. 1666 (2002) [42 U.S.C. 15483].

INFORMATION DIGEST AND POLICY STATEMENT OVERVIEW

Senate Bill 613 (Perata), Chapter 809, Statutes of 2003, enacted certain provisions required by the federal Help America Vote Act of 2002 ("HAVA"), Pub. L. No. 107-252, 116 Stat. 1666 (2002) [42 U.S.C. 15483]. This bill became effective January 1, 2004, adding Section 2124 to the Elections Code and amending Section 14311 of the Elections Code.

HAVA was drafted in the aftermath of the controversial 2000 presidential election in Florida and signed into law on October 29, 2002 by the President of the United States. Complex and interrelated federal mandates are included in the 161-page bill. HAVA provides federal funding to states conditioned upon the implementation of certain requirements, including the modernization of voting systems, elections official and poll worker training, voter education, accessibility to voting systems by individuals with disabilities or with alternative language needs, establishment of a statewide database, complaint procedure, and provisional balloting among other changes.

Pursuant to subsection (b) of Section 303 of HAVA, a state shall, in a uniform and nondiscriminatory manner, require an individual to meet certain requirements if the individual registered to vote in a jurisdiction by mail and has not previously voted in an election for federal office in the state or has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a state that does not have a HAVA-compliant statewide voter registration computerized list. The requirements depend on whether the individual votes in person or by mail. If the individual votes in person, then he or she must present to the appropriate state or local elections official a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter. If the individual votes by mail, then he or she must submit with his or her ballot a copy of a current and valid photo identification or a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

Prior to January 1, 2004, Section 14311 of the Elections Code permitted a voter who moved within the same county but had not reregistered to vote at the new address to vote on the day of

the election at the polling place of the current address upon showing proof of the current residence address. This section further required the Secretary of State to adopt regulations establishing the forms of identification that would qualify as proof of current residence address. Consequently, the forms of identification were added to Section 20107 in 1996. Senate Bill 613 deleted the requirement that a voter must show proof of the current residence address and the requirement that the Secretary of State adopt corresponding regulations. The emergency regulations adopted on February 5, 2004 repealed the provisions relating to proof of current residence address for provisional ballots in Section 20107 of Title 2 of the California Code of Regulations.

Senate Bill 613 also added Section 2124 to the Elections Code, requiring the Secretary of State to adopt uniform standards for proof of residency, which shall apply to all instances where voters or new registrants are required by law to prove residency. Under HAVA some voters may be required to present identification at the polls and some voters who register by mail or vote by absentee ballot may be required to include a copy of their identification. The emergency regulations adopted on February 5, 2004 added the uniform standards for proof of residency when proof is required by law to Section 20107. The certificate of compliance for the emergency regulations was required to be filed on June 4, 2005 or the emergency language was to be repealed by operation of law on June 5, 2004, unless the emergency regulations were readopted.

The Secretary of State readopted emergency regulations on June 1, 2004. During the readoption process, the language in subdivision (a) of Section 20107 indicating that the section applies “at the time of voting” was deleted. The language was originally added to the text during the Office of Administrative Law’s review of the initial emergency regulations. However, such language is inconsistent with paragraph (3) of subsection (b) of Section 303 of HAVA, which permits a person to submit copies of the specified documents with his or her voter registration affidavit. The certificate of compliance was required to be filed by September 29, 2004 or the emergency regulations would be repealed by operation of law on September 30, 2004, unless the emergency regulations were readopted.

Since the emergency regulations were initially adopted on February 5, 2004, the Secretary of State has continued to evaluate the effectiveness of the standards, conferring with county elections officials, the Department of Motor Vehicles, other state elections officials, the Election Assistance Commission, and other interested parties to determine the best practices with respect to the identification requirements. However, the Secretary of State has been unable to finalize the provisions of the subject emergency regulations, as the federal Election Assistance Commission had not promulgated the guidelines regarding the implementation of the HAVA voter identification requirements as set forth in subdivision (b) of Section 303 of HAVA. These guidelines were to be promulgated pursuant to paragraph (3) of subdivision (b) of Section 311 by October 1, 2003. Therefore, the Secretary of State again readopted the emergency regulations on September 29, 2004, which are scheduled to expire on January 28, 2005, unless the Secretary of State submits a certificate of compliance by January 27, 2005 or readopts the provisions.

The proposed amendments to the text of the emergency regulations are clarifying in nature.

AVAILABILITY OF TEXT IN PLAIN ENGLISH

The text of the proposed regulations is available in plain English from the contact person listed below.

DISCLOSURES REGARDING THE EMERGENCY REGULATIONS

The Secretary of State has made the following determinations.

Cost or savings to any state agency: The proposed regulations do not present a cost or savings to any state agency. Although the Secretary of State has the responsibility of notifying county elections officials of the uniform standards, there is no associated cost as this is accomplished through existing lines of communication.

Mandate on local agencies or school districts and, if so, whether the mandate requires reimbursement under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: The proposed regulations define the types of documentation that will serve as proof of residency and identity when proof is required by HAVA and do not pose any costs. The Secretary of State has determined that the proposed rulemaking does not impose a mandate requiring reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed rulemaking does not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.” The California Supreme Court has established that a “program” within meaning of Section 6 of Article XIII of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (*County of Los Angeles v. State of California* (1987) 43 Cal.3d 46.)

Cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code: None.

Other non-discretionary cost or savings imposed upon local agencies: The Secretary of State has not identified any other non-discretionary cost or savings imposed upon local agencies.

Cost or savings in federal funding to the state: HAVA provides for federal funding to states conditioned upon the implementation of several mandates, including federal funding for poll worker training. The proposed regulations are necessary to satisfy the mandates regarding voter identification.

Significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states: The Secretary of State has made an initial determination that the proposed regulations do not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposed regulations are a product of federal mandates regarding voting outlined in HAVA.

Cost impact that a representative private person or business would necessarily incur in reasonable compliance with the proposed action: The Secretary of State is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. The proposed regulations are a result of federal mandates outlined in HAVA to prevent the disenfranchisement of voters.

Adoption of these proposed regulations will not do any of the following: (1) create or eliminate jobs within California; (2) create new business or eliminate existing business within California; nor (3) affect the expansion of business currently doing business within California.

Significant effect on housing costs: The proposed regulations relate to voting and have no significant effect on housing costs.

BUSINESS REPORTING REQUIREMENT

The business reporting requirement is not applicable to the regulations as the subject matter is voting.

SMALL BUSINESS DETERMINATION

The Secretary of State has determined that the proposed regulations do not affect small business. The proposed regulations establish uniform standards for proof of residency and identity when a voter or new registrant is required by law to provide proof.

CONSIDERATION OF ALTERNATIVES

In accordance with paragraph (13) of subdivision (a) of Section 11346.5 of the Government Code, the Secretary of State must determine that no reasonable alternative considered or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Secretary of State shall have the entire rulemaking file available for inspection and copying throughout the rulemaking process. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice published in the Notice Register, the text of the proposed regulations, and the initial statement of reasons. For further information regarding inspection of the rulemaking file, contact Lisa Niegel, Staff Counsel, at (916) 653-3345 or Janee Marlan, the designated back-up contact, at (916) 657-2182. Copies of the rulemaking file may be obtained at www.ss.ca.gov/elections/elections.htm or by contacting Lisa Niegel, Staff Counsel, who is listed below as the contact person, or Janee Marlan, who is listed below as the designated back-up contact person.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the close of the public comment period, the Secretary of State may adopt the proposed regulations substantially as described in this notice. If the Secretary of State makes modifications which are sufficiently related to the originally proposed text, the modified text with changes clearly indicated shall be available to the public for at least 15 days before the Secretary of State adopts the regulations as revised. Please send requests for copies of any modified regulations to the contact person or designated back-up contact person listed below. The Secretary of State will accept written comments on the modified regulations for 15 days after the date on which the modified regulations are made available. Once the final statement of reasons is prepared in accordance with subdivision (a) of Section 11346.9 of the Government Code, copies may be obtained at www.ss.ca.gov/elections/elections.htm or by contacting Lisa Niegel, Staff Counsel, who is listed below as the contact person, or Janee Marlan, who is listed below as the designated back-up contact person.

CONTACT PERSON

Direct all inquiries and requests for copies of proposed text of the regulations, initial statement of reasons, modified text of regulations, if any, or other information upon which the rulemaking file is based to Lisa Niegel, Staff Counsel, or Janee Marlan, the designated back-up contact person, at Secretary of State's Office, Elections Division, Attention: Lisa Niegel, Staff Counsel, 1500 11th Street, Sacramento, California 95814.